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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

MM Docket No. 95-176

In the Matter of)

Closed Captioning and Video Description)
of Video Programming)

Implementation of Section 305 of the)
Telecommunications Act of 1996)

Video Programming Accessibility)
)

REPLY COMMENTS OF ALLNEWSCO, INC.

(d/b/a NEWSCHANNEL 8)

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SUMMARY

ALLNEWSCO, Inc. ("ALLNEWSCO") develops and produces locally based news and information programming for the multichannel television distribution environment in the Washington, D.C. area. ALLNEWSCO's cable television programming service, NEWSCHANNEL 8, is available in over 1,000,000 subscribing households in the Washington metropolitan area, through carriage agreements with 14 cable systems, and, as a public service, to Congressional offices and other federal installations on Capitol Hill. Although NEWSCHANNEL 8 was launched fewer than 6 years ago, it is widely viewed as a national leader in providing localized programming and innovative services to a large audience. Wholesale closed captioning requirements, however, threaten NEWSCHANNEL 8 and a number of similarly-situated regional multichannel television programming services throughout the United States.

Regional news programming services like NEWSCHANNEL 8 operate in an environment markedly different from those of nationally-distributed cable networks:

- The potential audience for the regional news programming is much smaller than that of nationally-distributed networks, meaning that both subscriber and advertising revenues are far less than that of national programming.
- Regional news programming, which must compete against established local broadcast stations with budgets in the millions of dollars, and which demands heavy expenditures in personnel and facilities, already provides few expectations of return for many years.

- The imposition of costly closed-captioning requirements would add yet another financial and regulatory deterrent to what is already an extremely difficult business to enter, which would contradict the Commission's oft-stated call for greater, not lesser, diversity in the realm of programming, and especially news and information programming.

ALLNEWSCO strives to serve the hearing-impaired community.

NEWSCHANNEL 8 has offered closed captioning for significant amounts of programming for more than five years. But a mandate for closed captioning, particularly real-time stenographic captioning, would deter the creation of new local information venues and further compound the fiscal burdens on an already-struggling industry. ALLNEWSCO urges the Commission to limit the burdens imposed by mandatory close captioning on local information programming. Specifically, we encourage the adoption of rules that do not inject the Commission into the private business transactions between program provider and distributor and that provide start-up programmers with a respectable period free of additional captioning expenses that could imperil the survival of emerging services.

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REPLY COMMENTS OF ALLNEWSCO, INC.

1. ALLNEWSCO, Inc. ("ALLNEWSCO") submits the following reply comments to the Federal Communications Commission on the Commission's Notice of Proposed Rule Making, *Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, FCC 97-4 (rel. Jan. 17, 1997) ("*Notice*"). This *Notice* was issued in response to the video programming accessibility provision of the Telecommunications Act of 1996 ("Telecom Act"), Pub.L. 104-104, 110 Stat. 56 § 305 (1996), and based in part on comments already filed in response to the Commission's *Notice of Inquiry*.¹

¹ See 11 FCC Rcd 4912 (1996). The Commission has announced that the comments filed in this proceeding are to be used to satisfy the inquiry mandated by the Telecom Act. *Order*, FCC 96-71 (rel. Feb. 27, 1996).

2. ALLNEWSCO. was organized in 1989 to develop a local cable television programming service providing news and information to the Washington, D.C. metropolitan area 24 hours a day. ALLNEWSCO's service, NEWSCHANNEL 8, was launched in 1991 and is distributed to more than 1,000,000 subscribers in the Washington area. It was only the third such regional news programming service in the United States at the time of its launch.

3. ALLNEWSCO is a founding member of the Association of Regional News Channels, which currently represents eighteen 24-hour local news and information programming services throughout the United States. This submission does not necessarily represent the opinion of any entity other than ALLNEWSCO; however, the issues addressed are not unique to ALLNEWSCO or its programming service.

4. Together, programming services such as NEWSCHANNEL 8 serve more than 15 per cent of the television households in the United States with around-the-clock local news, weather, and other information, and represent new voices in a growing number of communities, as other media outlets, including daily newspapers and radio stations, reduce their coverage of local events.²

5. NEWSCHANNEL 8 would qualify as a "small entity" under the various standards outlined in the *Notice*, though it or any other similarly situated programming service may not have been captured in the Commission's Initial Regulatory Flexibility Analysis.³

² See, e.g., "No News Is . . . Much Cheaper," THE WASHINGTON POST, Feb. 11, 1997, at C7 (discussing the reduction of local radio news service in one major market).

³ See *Notice* at ¶ 128.

6. As the producer of a significant number of hours of daily programming that has, by definition, no market beyond its telecast time and local community, and for which revenues are extremely limited,⁴ ALLNEWSCO is concerned with the many foreseeable financial impacts of captioning requirements that would risk the loss of local news programming service to our home communities.

7. The Commission correctly noted that programmers may purchase the caption encoder and script translation software necessary for electronic newsroom ("ENR") captioning, in which the captions are produced as an output of the scripting process, for no more than \$5,000.⁵ That cost estimate, however, presumes that a programmer has already installed a basic Electronic Newsroom system, the cost of which can be far greater, depending on the complexity and number of work stations. The NewsView ENR System used by NEWSCHANNEL 8 cost ALLNEWSCO well over \$100,000.

8. As noted elsewhere, however, the ENR method cannot caption unscripted material.⁶ Commenters specifically noted problems with the ENR method of captioning as it relates to weather, live news, and emergency broadcasts.⁷

⁴ See, e.g., Time Warner Cable, Inc. Comments at 7-10; "'Mini CNNs' Fill a Niche on Local Cable Channels," THE CHRISTIAN SCIENCE MONITOR, January 11, 1997, at 1 (noting that "virtually all [24-hour local news services] are losing money").

⁵ See Notice at ¶ 21.

⁶ See *id.*

⁷ See, e.g., National Association of Broadcasters Comments at 16-17.

9. For a programmer like ALLNEWSCO, huge segments of a day's programming are live and unscripted, including live reports of some news, certain event and sports coverage, and weather reporting.

10. To caption this substantial and valuable segment of ALLNEWSCO's programming would thus require real-time captioning. Even the largest or most successful regional news channel, however, cannot hope to afford the costs of real-time captioning its programming. The cost estimates of \$120 to \$2,500 per hour of captioning described in the *Notice* would impose an insurmountable hardship on these programmers.⁸ Captioning would actually *double* the per-hour cost of programming, leaving programmers such as NEWSCHANNEL 8 with the option of either reducing live news programming or having to cease operations entirely.

11. Even should NEWSCHANNEL 8 be able to hire sufficient full-time stenocaptioners to caption its operations continually, the result would be great economic burden, as specially trained stenocaptioners in the public and private sectors are few in number and are extremely well-paid by the standards of other production workers in 24-hour local news services. Time Warner Cable has even projected that the costs of such intensive stenocaptioning as would be necessary for a 24-hour local news service could reach \$500,000 annually.⁹ Such an expensive mandate would have the effect of dramatically reducing the local service for *all* viewers.

⁸ See *Notice* at ¶ 115.

⁹ See Time Warner Cable, Inc. Comments at 6-7.

12. To avoid the risk that captioning rules may inadvertently pose to various emerging programming genres with initially low levels of financial support, ALLNEWSCO urges the Commission to declare, specifically and conclusively, that the ENR method of closed captioning fulfills the goals of Section 713.

13. Although, as noted, the ENR system requires a significant initial outlay, limiting captioning requirements to an ENR requirement for regional news programmers would at least provide a conceivably viable form of captioning for this programming, which, though valuable to its communities, cannot afford the costs of stenocaptioning. Otherwise, regional programmers throughout the nation would have to seek almost daily exemptions under the "undue burden" standard for a number of their programming elements.

14. Moreover, we recommend that the Commission adopt a standard that permits start-up, locally-based, programming services an exemption from the captioning rules for a period of at least eight years from their inception of programming.¹⁰ Although we anticipate that market forces would lead most programmers to caption their programming well before the exemption period had expired, particularly if the Commission explicitly designates the ENR to be an acceptable method of attaining the goals of the Section 713, such an exemption would permit these start-up services to direct undivided resources to surviving the critical early years.

¹⁰ See also National Cable Television Association Comments at 19-20 (demonstrating that all start-up cable programmers should be exempt from captioning requirements for at least five years from the advent of their programming).

15. The Commission should not adopt any type of real-time captioning requirement on local programming that depends on the size of the locality's market, as such a standard bears no sensible relationship to the burden that captioning would cause a particular type of programming. Although NEWSCHANNEL 8, as other regional programmers, operates in what is classified as a major market, it faces very different economic and viewership circumstances from traditional broadcast or nationally distributed cable programming. The Commission's own initial regulatory flexibility analysis of small entities shows the complex and difficult nature of attempting to set standards based on size.¹¹ Attempting to create requirements based on geographical location would be even more capricious. We believe that the most practicable course is our proposal that the ENR captioning method be acceptable as a baseline standard, and that competition and market forces will drive larger programmers toward real-time captioning.

16. ALLNEWSCO also requests that the Commission recognize that the conversion from analog to digital television standards will impact the process of captioning, and urges that programmers migrating to digital plant and facilities be granted waivers until encoders and other captioning devices that work within a digital routing and switching environment are developed and marketed at reasonably affordable prices. Such a standard will encourage the migration of smaller programmers to the digital environment sooner, as well as providing flexibility for developing new services.

¹¹ See, e.g., *Notice* at ¶¶ 147-48.

17. The *Notice* also asks for comment regarding who is responsible for compliance with any closed captioning requirements imposed by this proceeding. Although ALLNEWSCO is a licensee of the Commission for the purposes of operating a microwave programming relay service in the CARS band, and as an operator of Satellite Newsgathering Vehicles, its programming service is neither a broadcast licensee nor a cable system operator licensee of the Commission. As such, the authority of the Commission to regulate the programming activities of an independent programming provider, as opposed to a broadcast or cable system licensee, would unavoidably raise both practical and First Amendment concerns.¹²

18. We thus support the Commission's position that video programming providers, defined as television stations, cable operators, or other entities responsible for the telecast of the programming to the end-users, be obliged to ensure compliance with the rules. To attempt to extend the reach of the Commission to command compliance to the copyright owner, be it an independent producer, film studio, or non-licensee programming service such as NEWSCHANNEL 8, would be regulatory overreach that would invite legal challenges on constitutional grounds, and would require vast and costly new bureaucracies within the federal government that would likely achieve no more compliance than that which could be expected if the ultimate "retailer" of television service is the accountable party.

¹² See National Cable Satellite Corporation ("C-Span") Comments at 6-8. Other comments also agree that the statute did not intend any type of overbroad interpretation that would result in such a staggering increase in the Commission's jurisdiction and regulatory burden. See, e.g., Grupo Televisa, S.A. Comments at 2-3. Not only would such an interpretation be unreasonable on many legal levels, but the practical burdens that would result from such regulatory attempts far outweigh any alleged benefits.

19. In addition, the suggestion that costly captioning requirements in turn require substantial public recordkeeping is particularly disturbing to non-licensee independent programmers that utilize non-affiliated distribution by contract, either with a broadcaster, cable system, or other provider.¹³ The costs related to developing and maintaining a public file will add directly to the cost of programming. For each file clerk maintaining a database of comments, a position potentially impacting all programming service is eliminated. This is clearly not the intent of Section 713.

20. We concur with the conclusion of the Commission that contracts for programming of all types will rapidly and effectively adopt reasonable captioning requirements into their language, which will ensure that the significant costs of captioning are efficiently and individually handled without additional government intervention. Because programming costs can be supported in a variety of ways (e.g. advertising, subscriber/viewer contribution, third-party donation, time purchase), providing maximum flexibility to all parties in the process of producing and distributing programming will assure that the extremely costly process of captioning causes the least disruption to what should be private commercial transactions.

21. Finally, we believe that the technical standards for captioning already in place provide adequate safeguards for the provision of captions themselves. We also endorse the

¹³ A number of other commenters recognize that parties with a local focus should not be compelled to maintain extensive additional records. *See* Association of Local Television Stations Comments at 16; C-Span Comments at 11.

view of the Commission and many commenters that quality standards for the captions themselves are a quagmire better left unvisited in the initial phase-in of closed captioning regulation.¹⁴ The notion of the Commission mandating spelling accuracy rules, apart from its being fodder for stand-up comedians, verges on very serious First Amendment issues, and we urge the Commission to give these issues a wide berth. We agree with the Commission that the marketplace will create incentives for producers to provide the best captioning service possible.

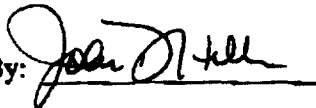
22. As programmers to local communities, we are alert to the need to provide the best possible service to all television viewers. As noted, all of NEWSCHANNEL 8's newscasts already provide ENR method closed captioning services to benefit its community. However, the potential entry of the Commission into the realm of independent programmers not hitherto subject to its direct regulation, along with the attendant costs, both of mandated captioning and of complying with new layers of regulation, compel us to urge the Commission to weigh

¹⁴ See, e.g., *Notice* at ¶ 111; Television Food Network Comments at 7.

carefully the certain costs and potential risks of lost services that will result from excessive captioning requirements.

Respectfully submitted,

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